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In the Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

STATE OF WISCONSIN, *et al.*,
vs.
STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO, *et al.*
No. 5, ORIGINAL.

STATE OF MICHIGAN, *et al.*,
vs.
STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO, *et al.*
No. 8, ORIGINAL.

STATE OF NEW YORK, *et al.*,
vs.
STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO, *et al.*
No. 9, ORIGINAL.

BRIEF OF WISCONSIN, MINNESOTA, OHIO AND MICHIGAN IN OPPOSITION TO PETITION FOR REHEARING FILED BY THE STATE OF ILLINOIS.

(Names of Solicitors for the Complainants on inside of front cover)

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO

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The Petition for Rehearing filed by the State of Illinois is divided into two parts. The first and principal part asserts certain supposed grounds for a modification of the decree, for a limitation of the primary liability of the State of Illinois under the decree and for a denial *pro tanto* of the just rights of the Complainant States heretofore found and adjudged to them by this Court, and the second deals with supposed reasons for additional leniency in the performance of the duty of the State of Illinois under the decree of this Court.

I.

THE SUPPOSED GROUNDS ASSERTED BY THE STATE OF ILLINOIS FOR A MODIFICATION OF THE DECREE, FOR A LIMITATION OF THE PRIMARY LIABILITY OF THE STATE OF ILLINOIS UNDER THE DECREE AND FOR A DENIAL PRO TANTO OF THE JUST RIGHTS OF THE COMPLAINANT STATES HERETOFORE FOUND AND ADJUDGED TO THEM BY THIS COURT HAVE BEEN SEVERAL TIMES DECIDED BY THIS COURT ADVERSELY TO THE CONTENTIONS NOW ADVANCED. THEY ARE RES JUDICATA AND STATE NO GROUND FOR A REHEARING; BUT WERE SUCH QUESTIONS STILL OPEN, AS THEY ARE NOT, THEY ARE CLEARLY WITHOUT SUBSTANCE.

Part I of the Petition for Rehearing is a reiteration of the same supposed defenses and the same misconceptions and misapplications of various principles of law and the same misconceptions of fact which the State of Illinois has urged before this Court since 1926 in exoneration or limitation of its obligation to remedy the wrong inflicted upon these Complainant States and their peoples. This is clear from a casual examination of the pleadings, the briefs and the record in this litigation. The Petition for Rehearing not only admits but stresses that the State of Illinois has consistently urged these supposed grounds of exculpation or limitation of its liability throughout this litigation. These supposed grounds of exculpation and limitation have been considered and denied by this Court in four previous decisions. *Wisconsin, et al. v. Illinois, et al.*, 270 U. S. 634; Same 278 U. S. 367, 409, 419; Same 281 U. S. 179, 196, 197, 696; Same (not yet officially reported) decided May 22, 1933, 77 L. Ed. 882. All of the contentions now reasserted by the State of Illinois in its petition for rehearing are *res judicata*. The gratuitous assumption in the Petition for Rehearing that this Court in four careful hearings in this litigation did not give any consideration to these contentions,

vigorously pressed in oral argument and voluminous briefs, is wholly unsupported. This Court in fact did carefully consider these bold assumptions of power on the part of the State of Illinois to inflict without restraint injuries upon the Complainant States and their peoples and determined that such supposed rights do not exist. Since the contentions reasserted in the Petition for a Rehearing are *res judicata,* it is manifest that they furnish no grounds for a rehearing; for, if the law were otherwise and a litigant could continually reassert contentions already decided adversely to him, as a proper basis for a rehearing, there could be no end to litigation. Under these circumstances, it is difficult to justify the filing of this Petition for Rehearing.

Moreover were the contentions raised by the State of Illinois in its Petition for Rehearing still open for consideration, as they are not, they are manifestly without substance either in fact or in law. The bills in these suits directly charge the State of Illinois with primary responsibility for the diversion and consequent injury to the Complainant States. In each instance the Sanitary District was charged to be acting as an arm or subordinate agency of the State of Illinois, not only pursuant to its authority but under its compulsion. *Wisconsin et al. v. Illinois et al. Amended Bill,* Paragraphs 11, 12 and 14; *Michigan v. Illinois, et al. Bill,* Paragraphs 12, 13 and 15. The State of Illinois in its Petition for Rehearing not only admits but insists that it urged throughout this long litigation the contentions now reiterated.

The principal contention advanced by the State of Illinois is that the decree of this Court does not give sufficient consideration to the so-called "doctrine of equitable apportionment" or to the supposed right of Illinois "to appropriate a reasonable portion of the waters of Lake Michigan." (Petition for Rehearing, pp. 2-3, 14.) The con-

sideration granted to the State of Illinois by way of diversion after December 31, 1938, was based upon the doctrine of equitable apportionment. (Report of Special Master on Original Reference, p. 23; *Wisconsin et al. v. Illinois, et al.*, 281 U. S. 179, 200.) However, laying aside the circumstance that the question is *res judicata*, the contention of Illinois finds no support in fact or in law.

As defining the so-called "doctrine of equitable apportionment" the State of Illinois relies upon the following cases: *Kansas v. Colorado*, 185 U. S. 125; *New York v. New Jersey*, 256 U. S. 296; *Wyoming v. Colorado*, 259 U. S. 419; *Connecticut v. Massachusetts*, 282 U. S. 660 and *New Jersey v. New York*, 283 U. S. 336. In none of these cases did this Court hold that an upper riparian State may appropriate the whole of its contribution to an interstate waterway in disregard of the rights of lower riparian States. Naturally these decisions fall far short of sustaining a claim of right to appropriate several times the contribution of the upper riparian State to an interstate waterway.

In *Kansas v. Colorado*, 185 U. S. 125, this Court merely overruled a demurrer and did not "pause to consider the scope of the relief which might be granted." When that case came before this Court for final disposition, it was merely held that a limited use of the waters of the interstate stream by the upper riparian State in conformity with the law of waters governing the use of such stream in the lower riparian State could not be considered an unreasonable use by the upper riparian State—at least so long as such use by the upper riparian State did not materially affect the proper uses of the waters of the stream by the lower riparian States. The claim of Colorado, the upper riparian State, that it might appropriate all or as much of the waters of interstate stream as it could use

without regard to effect on lower riparian State was specifically denied.

New York v. New Jersey, 256 U. S. 296, did not involve any question of appropriation of interstate waters but merely concerned the creation of a nuisance through pollution and manifestly has no application to the principle urged.

The doctrine of unrestricted appropriation by an upper riparian State, even though the doctrine of prior appropriation under the law of waters of the semi-arid West prevailed in both States was expressly repudiated in *Wyoming v. Colorado,* 259 U. S. 419, and the Court held that the upper riparian State could not justify such an usurpation of power on the ground that it could make a more profitable use of the waters than the lower riparian State.

Connecticut v. Massachusetts, 282 U. S. 660, involved merely the appropriation of a portion of the waters of an insignificant and non-navigable tributary of the Connecticut River. The appropriation by Massachusetts was largely limited to the impounding of flood run-off, and the project of the State of Massachusetts specifically provided for the release during low water periods of more than the average low water flow of the non-navigable tributary. This was the extent of the appropriation by Massachusetts, as an upper riparian State in the exercise of its right as a State standing on a plane of equality with the other States, which was sustained by this Court.

New Jersey v. New York, 283 U. S. 336, involved in substance the appropriation by the State of New York, as an upper riparian State, of only a portion of the impounded flood run-off of some of the head waters of the Delaware River. Like the Massachusetts project in the preceding case, the project of New York provided for a release during low water of an amount equal to or in excess of the low

water flow of the head waters from which the appropriation was to be made. In fact the project of the State of New York involved merely the impounding of some of the flood waters which would otherwise run wasting to the sea. This was the extent of the appropriation by New York as an upper riparian State standing on a plane of equality with its sister States, which was sustained by this Court; and the decision was with leave to the State of New Jersey to renew its claim in this Court should such an appropriation prove in practice contrary to the findings made on the available evidence, to be injurious in fact to New Jersey as a lower riparian State.

It will be noted that *Connecticut v. Massachusetts, supra* and *New Jersey v. New York, supra*, concern States in which, as in the instant litigation, the common law of waters prevailed. Similarly *Kansas v. Colorado, supra*, and *Wyoming v. Colorado, supra*, concern States in the semi-arid West where the common law of waters has been replaced by the doctrine of prior appropriation.

The foregoing cases represent the extent to which this Court has sustained appropriations of waters constituting, or tributary to, an interstate waterway by an upper riparian State. They are the cases relied upon by the State of Illinois. When these decisions and their facts are applied to the case at bar, it is manifest not only that they do not sustain, but squarely refute the contention advanced by the State of Illinois.

The mean annual average contribution of the State of Illinois to the Great Lakes-St. Lawrence Waterway is 503 cubic feet per second. (Report of the Special Master on Original Reference, p. 23.) After the decree of this Court becomes fully effective on December 31, 1938, the State of Illinois will be permitted to divert 1500 cubic second feet plus the domestic pumpage. *Wisconsin, et al. v. Illinois,*

et al., 281 U. S. 696. The record in this case establishes that the mean average annual domestic pumpage equals or exceeds 1700 cubic feet per second. (Semi-annual Report of the Sanitary District filed January 1, 1931, p. 14.) Under normal conditions it is gradually increasing. The domestic water consumption in the Metropolitan area in Chicago involves a tremendous waste. The City of Chicago has refused and still refuses to meter its domestic water supply, which is largely the supply of the other suburban cities embraced in the Sanitary District of Chicago. While the use of water for domestic and industrial purposes is grossly excessive, it is not limited by the decree of this Court dated April 21, 1930. Although open to future consideration, it is not now or here involved. *Wisconsin, et al. v. Illinois, et al.*, 281 U. S. 179, 200. It thus appears that after the decree of this Court becomes fully effective on December 31, 1938, the State of Illinois will be permitted to take a total of more than 3200 second feet of water or over six times its total contribution to the Great Lakes-St. Lawrence Waterway. It is, therefore, respectfully submitted that the instant decree after it becomes fully effective will permit the State of Illinois to take from the Great Lakes-St. Lawrence Waterway a quantity of water greatly in excess of any appropriation which it could possibly claim in the exercise of any supposed right as a State standing on a plane of equality with the Complainant States. Indeed the decisions of this Court in *Connecticut v. Massachusetts, supra; New Jersey v. New York, supra;* and *Wyoming v. Colorado, supra,* would not sustain a fraction of the appropriation allowed the State of Illinois under the decree of April 21, 1930. And yet the State of Illinois seeks to claim even a more favored position at the expense of its sister States. The facts hereinbefore recited are not only adequate to establish that the diversion allowed to Illinois could not be sustained on the basis of any supposed

equitable right of appropriation but that other considerations led the Court to make an allowance far in excess of any rights which Illinois as a State could sustain.

We turn briefly to a consideration of the uses which Illinois, as it asserts in its Petition for Rehearing, desires to make of the waters of the Great Lakes-St. Lawrence Waterway in derogation of the rights and to the great injury of the other States and the Dominion of Canada which contributed those waters. It is said that the State of Illinois desires to appropriate the waters of Lake Michigan for the domestic uses of its citizens bordering upon the Great Lakes. (Petition for Rehearing, p. 8.) The irrelevant and specious character of this suggestion is transparent when it is remembered that, notwithstanding the indefensible waste of such waters for domestic and industrial purposes by the State of Illinois, the decree of April 21, 1930, places no restriction whatsoever upon such use. Indeed one of the objections voiced by the Complainant States on the hearing leading to the decree of April 21, 1930 was that this circumstance placed a premium upon the further wasteful appropriation of waters for domestic and industrial purposes.

It is also stated that the State of Illinois desires to appropriate the waters of Lake Michigan for navigation on a waterway largely constructed by its funds and now taken over by the Federal Government. (Petition for Rehearing, p. 8.) First, it has already been established that the State of Illinois has no right to take any water in addition to that allowed by the decree of April 21, 1930, for the supposed Illinois Waterway or to save a trifling expense in its construction. Second, it has been authoritatively determined by the present Chief of Engineers that the flow provided by this Court's decree is far in excess of any navigation requirements of this waterway. (Report of Special Master

McClennen, pp. 32-35.) Third, since this waterway has been taken over by the Federal Government, any right to maintain a diversion for navigation upon that waterway beyond that provided by the instant decree, if it existed, which Complainants deny, would rest in the Federal Government and not in the State of Illinois. It is further said that the State of Illinois desires to appropriate waters to prevent nuisance from the deposit of sewage in such waters and to maintain purity of the waters of Lake Michigan. One of the purposes of the decree of this Court is to compel the defendants so to purify the sewage of the Sanitary District of Chicago by artificial processes that with the restoration of Complainants' rights it will not cause a nuisance to navigation or otherwise. The State of Illinois thus again advances the bold contention, which was the principal defense originally urged, that it may base a right to inflict a vast and continuing injury upon the Complainant States and their peoples upon a situation created and to be continued by its own wrong. In short, it seeks to support a claim for the continued infringement of Complainants' rights by asserting an intention, unless restrained, to continue the wrong of the State of Illinois. This contention has been expressly repudiated by this Court. *Wisconsin et al. v. Illinois, et al.*, 278 U. S. 367, 418.

It is further asserted that there should be an appraisal to determine the damage to the Complainant States which would be produced by the lowering of the levels in the Great Lakes amounting to three inches instead of six. (Petition for Rehearing, p. 8.) First, it is manifest that the only result would be that the vast, widespread and annually recurring damages to the Complainants, which were described in the report of the Special Master on the Original Reference and in the decision of this Court reported in 278 U. S. 367, would be reduced to something in excess of 50% of the damages so found. The suggestion that the

State of Illinois should be authorized to despoil the Complainant States on condition that it should consent to decreasing its despoliations by something less than 50% is shocking. Even if such a despoliation of the Complainant States and their peoples would save expense for the State of Illinois, it would be unthinkable that it could be sustained upon such a ground; and this Court has decided that the claim of a State that it is profiting or will profit by a wrongful invasion of the rights of sister States constitutes no defense. *Wyoming v. Colorado,* 259 U. S. 419. However, it is manifest that even under such circumstances all of the works for the purification of the sewage of the Metropolitan area of Chicago would have to be constructed and placed in operation.

The gratuitous and untrue suggestion is made that conditions under which navigation is conducted on the Great Lakes have changed materially since the original hearing. (Petition for Rehearing, p. 8.) Presumably reference is made to the circumstance that increased project depths have been adopted for *some* of the navigation channels on the Great Lakes. It is shown by the record on the original reference that project depths are related to a hypothetical datum plane and only by accident coincide with actual water levels and actual depths. For many years the principal navigation channels on the Great Lakes have for a large part of the time had much less than project depths due in a substantial part to the diversion at Chicago. However, the benefit of those depths, whether greater or less than the project depths, belong to the Complainant States and their peoples in common with the other people of United States. They are not created to relieve Illinois from righting a wrong to her sister States. Moreover, the record in the original Reference established that Federal improvements on the Great Lakes consist of making a channel from deep water to the principal inner har-

bors and that all of the inner harbors and navigation facilities have been and are provided either at the expense of the local municipality or at the expense of private industries and usually both. Their value and usefulness are strictly limited by both the Federal and local imports. It is suggested that at a time when both municipalities and industries are struggling to meet their obligations, there should be imposed upon them the additional cost of reconstructing the inner harbors and navigation facilities so as to offset in some degree the damages caused by the State of Illinois to the end that that State may serve some local selfish purpose of its own, which is apparently not fully disclosed, since it professes that sewage disposal works will be built in any event. It may be significant that the State of Illinois is now pressing before the Federal Power Commission for licenses for water power projects on the so-called Illinois Waterway and that the value of those water power developments, if made, will be in direct proportion to the quantity of water which the State can abstract from the Great Lakes-St. Lawrence Waterway. Of course, even such vast expenditures by the Complainant States and their peoples would not in any degree mitigate the large non-navigational damages found to have been caused by Illinois. Moreover, the evidence on the original Reference established that there are over four hundred ports and landings on the Great Lakes, many of which, though useful and of great value to the Complainant States, have no Federal improvements by way of channels from inner harbors to deep water or otherwise, and as to which the water level determines the feasibility from an economic standpoint of water borne traffic, both interstate and intrastate. In each of these ports any decrease in water level is a serious injury and may readily destroy its utility. It seems unbelievable that the State of Illinois could seriously suggest that all of these ports and landings should

either be substantially prejudiced or rendered unusable to serve some undisclosed selfish purpose of the State of Illinois.

II.

THE REASONS URGED BY THE STATE OF ILLINOIS FURNISH NO BASIS FOR A REHEARING ON THE TERMS OF THE PARAGRAPH OF THE DECREE IMPOSING A SPECIFIC RESPONSIBILITY UPON THE STATE OF ILLINOIS TO CARRY OUT THE DECREE OF APRIL 21, 1930.

The State of Illinois in its Petition for Rehearing seeks an opportunity to relitigate the factual issues upon which it relied for additional leniency in the performance of its obligation under the decree. Initially it may be noted that the paragraph added to the decree by the recent decision in this Court merely stated categorically an obligation which always rested upon the State of Illinois under the decree of April 21, 1930.

The State of Illinois was afforded an opportunity to present the fullest evidence upon this subject not only during the protracted regular hearings on the recent Reference but at a special hearing held for its benefit after the State of Illinois had been afforded the privilege of examining a tentative draft of the report of the Special Master on the Reference of December 19, 1932. All of that evidence was carefully reviewed by the Special Master. Undoubtedly it was given careful consideration by this Court. It would be improper for the Complainants to reargue that evidence in detail. Under that evidence there is no question but that the financial resources of the State of Illinois are more than adequate to sustain the burden placed upon the State by the decree of this Court.

The contention that the provisions of the Illinois Constitution are such as to postpone performance of the decree

of this Court in the exercise of its original jurisdiction at the pleasure of the State was fully covered in the briefs and arguments before this Court on the recent hearing and was found to be without substance. (See also Complainants' principal Brief on recent hearing, filed with this Court April 10, 1933, pp. 87-93.) It is manifest not only that Section 18 of Article IV of the Illinois Constitution has no application to a provision for satisfaction, through bond issues or otherwise, of a previously existing liability or obligation or a liability or obligation arising involuntarily on account of tortious conduct, but also that were it applicable, it would be clearly void when sought to be applied to defeat the performance of an obligation adjudicated by this Court in the exercise of its original jurisdiction over controversies between States. We respectfully submit that it lies with the State to choose whether it will raise these funds by bond issue or direct taxation. The resources of the State are adequate for either method. It is suggested that funds could not be raised by direct taxation. That is manifestly untrue. The State of Illinois during the current year is appropriating and spending approximately $30,000,000 for extensions of an already magnificent and comprehensive State highway system. (Report of Special Master McClennen, p. 119.) Over $8,000,000 is being distributed to Counties for highway construction. (Report of Special Master McClennen, pp. 119, 121.) It is surprising that the State would suggest that, although it can raise more than the required funds to build unessential new concrete highways, it cannot raise the funds to right a wrong to its sister States.

All the factual questions which the State of Illinois seeks to relitigate by way of petition for rehearing were fully covered in the briefs and arguments before this Court on the hearing had on April 17, 1933. It seems unnecessary and would undoubtedly extend this brief to review them.

We might note in passing that recent advertisements in Chicago newspapers list bonds of the State of Illinois for sale at a price to yield 3.80%. This is scarcely an evidence of impaired credit.

The Petition for Rehearing states:

> "The Master himself sets out the deficiencies in the State tax collection for the years 1929 to 1932, inclusive, (Report, page 116) which shows a total deficiency in collection in the sum of $66,360,000." (Petition for Rehearing, p. 12.)

This is a gross misstatement of the record. The figure quoted is the amount due to the State before or *in 1933* which includes not merely delinquencies but the tax levies which would come into collection *during 1933.* (Report of Special Master McClennen, p. 116.) The total State tax levies, as found by the Special Master, for Counties other than Cook, which had not been collected on December 31, 1932, were $1,999,000 out of the tax levy for 1931 and the tax levy for 1932, amounting to $15,914,000. (Report of Special Master McClennen, p. 116.) Only $1,999,000 out of the State tax levy for 1931 for Counties other than Cook was overdue. (Report of Special Master McClennen, p. 118.) This small sum does not in fact represent delinquencies in the sense in which that term is used in this litigation, for it represents merely the normal loss in tax collections which is expected at all times and allowed for in the tax levies. The State tax levy for 1932 in Counties other than Cook was just going into collection at the close of the recent hearings (R. 1895) and manifestly showed no "deficiency in collection" or delinquencies. Furthermore, the Special Master's statement of the State tax levies for Cook County which had not been collected on December 31, 1932, includes the State tax levy for 1931 in the sum of $15,056,000 and the State tax levy for 1932 in the sum of $19,305,000. Due to the inexcusable maladministration and

delay in extending taxes for collection in Cook County, the State tax levy for Cook County for 1931 did not go into collection until 1933, and manifestly was neither overdue nor delinquent on December 31, 1932. (Semi-annual Report of the Sanitary District of Chicago filed January 1, 1933, p. 7; R. 1940.) For similar reasons the 1932 tax levy for Cook County had not been extended for collection at the time of the hearings held by the Special Master and would not go into collection until some time during 1933. (R. 1940.) Manifestly none of the State tax levies for Counties other than Cook for 1932 and in the case of Cook County for 1931 and 1932 had gone into collection and much less become delinquent by December 31, 1932, which is the date of the Table cited as authority for the statement quoted from the Petition for Rehearing.

The record on the recent Reference established that there was no delinquent taxes in the State of Illinois outside of Cook County. (Christy, R. 1768.) That is, there was a normal collection of taxes in the whole of the State of Illinois outside of Cook County. (Christy, R. 233.) In our briefs before this Court on the last hearing, we pointed out that the delinquencies in tax collections in Cook County were conclusively shown by the evidence not to be due to the depression, but to inexcusable maladministration in the extension and collection of tax levies. (See Complainants' Brief, April 10, 1933, pp. 60-61.) This circumstance was adverted to by the Special Master, who found, "The Cook County delinquencies and sluggish extensions," "to be the only thing abnormal in Illinois State finances." (Report of Special Master McClennen, p. 118.) The State in its Petition for Rehearing fails to bring to the attention of the Court the fact that, with more vigorous action by tax collecting officials, tax collections in Cook County have greatly improved since the testimony was taken on the recent hearing, or that such improvement has been great enough

to enable the Sanitary District to redeem some of its defaults. The State also neglects to point out that further examination has resulted in a reduction of the estimate of the total cost of completing the whole sewage disposal program of the Sanitary District to $120,000,000. (Engineering News-Record, June 22, 1933, p. 819.)

Reference is again made to poor relief. This matter was carefully examined by the Special Master on the recent Reference. Laying aside the fact that the Federal Government has now largely assumed the obligation for relief, the State neglects to point out that the Counties have extensive resources from one cent of the gas tax and that many of the Counties do not even utilize that money for poor relief but devote it to the diminution of other taxes. Of course, the current improvement in employment is well known. The State does not point out that it is spending large sums for unnecessary improvements which could, were they needed, be devoted to poor relief or other purposes. The State points out that the three cent sales tax adopted by the General Assembly has been held unconstitutional since this case was submitted. That tax was held unconstitutional only because it embodies unconstitutional discriminations under the State and Federal Constitutions by way of exemptions. *Winter v. Barrett, et al.*, decided by the Illinois Supreme Court on May 10, 1933 (Not officially reported—See U. S. Law Weekly Journal, May 23, 1933). The General Assembly of Illinois is in session, and there is nothing to prevent the Assembly from enacting a constitutional sales tax law or any other financial measure it chooses. The State neglected to point out that a new sales tax bill eliminating the unconstitutional features of the old law was then before the Illinois General Assembly. This sales tax bill has now become law. However, it could hardly be suggested seriously that the unwillingness of the General Assembly of Illinois to comply with the restrictions of the State Constitution in

enacting fiscal legislation can be made the basis of defeating or postponing the restoration of the Complainants' rights.

It is astounding to find one of the richest States in the Union seeking to be relieved of a just obligation at the expense of its sister States. This shocking position is carried to a point where Illinois with a magnificent highway system interlacing the whole of its territory and vastly superior to the highway systems of the Complainant States seeks to be permitted further to extend and enlarge that system and carry it to every rural hamlet while it fails to meet its obligation to remedy a wrong inflicting a vast and continuing injury upon those States and their peoples. In the last analysis, Illinois in effect asks to have these highways constructed at the expense of the Complainant States for it seeks to appropriate property of those States and their citizens for local sewage disposal while it uses the funds which might otherwise be devoted to that purpose for the construction of internal improvements. An analysis will show that the State tax rate of Illinois is much less than the State tax rate of many of these Complainant States. It will show that the combined bonded indebtedness per capita of the State of Illinois and its municipal subdivisions is much less than the combined bonded indebtedness per capita of the Complainant States and their municipal subdivisions. Yet it is urged that the burden of great and continuing damages should be left upon the Complainant States and their peoples while the State of Illinois devotes its financial resources to local improvements for local benefit. The grounds urged in the Petition for Rehearing are not only without merit in law but they rest upon an unconscionable attempt to perpetuate a great injustice, which has already remained far too long without remedy, upon the Complainant States and their peoples.

We respectfully submit that the Petition for Rehearing should be denied.

Respectfully submitted,

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